

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)	
)	
LEVEL 3 COMMUNICATIONS LLC)	WC Docket No. 03-266
)	
Petition for Forbearance Under)	
47 U.S.C. 160(c) from Enforcement)	
of 47 U.S.C. 251 (g), Rule 51.701(b)(1),)	
and Rule 69.5(b))	

**COMMENTS OF OREGON-IDAHO UTILITIES AND
HUMBOLDT TELEPHONE COMPANY ON PETITION
OF LEVEL 3 COMMUNICATIONS LLC**

1. Oregon-Idaho Utilities, Inc. (OIU) and Humboldt Telephone Company (HTC) respectfully present their Comments on the December 23, 2003, Petition of Level 3 Communications LLC for exemption of its for-profit long distance telephone service from payment of access charges for Level 3's use of the facilities of Local Exchange Carriers (LECs) to originate and terminate long distance telephone calls. Level 3's Petition offers no sound reason why its long distance telephone service should be exempt from the same access charges that are applied in a nondiscriminatory manner to Level 3's competitors in the long distance telephone business, including interexchange carriers. Level 3 promises that its long distance telephone business will "continue to blossom and flourish" if Level 3

does not have to pay its legitimate expenses of operation and if, instead, those costs can be foisted on the Local Exchange Carriers by giving Level 3 a free ride on LEC access facilities.¹ This is scarcely news. What business would not benefit from the free use of its competitors' services and facilities?

2. OIU and HTC oppose Level 3's Petition. OIU and HTC are small, rural local exchange carriers operating two separate study areas serving the states of Oregon, Idaho, and Nevada. OIU and HTC fit the definition of "high-cost" rural companies. They participate in the NECA access pools, receiving funds from these sources based upon the actual costs incurred by OIU and HTC in providing access services to interexchange carriers and other customers.²

3. OIU and HTC are unimpressed by the suggestion in Level 3's Petition that the Commission should allow Level 3 to receive a free ride on LEC access facilities only in areas served by non-rural LECs. The "rural exemption" principles discussed by Level 3 apply to local competition and local interconnection services. Access charges apply to non-local, long-distance telephone traffic, and long-distance traffic does not involve rural exemption procedures.

¹Petition at iv.

²OIU and HTC also participate in the regional and national organizations which represent small, rural local exchange carriers before the Commission, and they fully support and concur in the Comments that will be filed in this proceeding by those organizations. Those comments will fully address and illuminate the lack of merit in Level 3's Petition. These brief comments by OIU and HTC are intended only to present additional views concerning certain of the broad policy issues that underlie the reckless proposal outlined in the Petition.

4. The distinction between “local and toll” or “telephone exchange and interexchange” traffic is mandated by the Telecommunications Act of 1996. This was clearly stated by the Commission in its First Report and Order, FCC 96-325, at Paragraphs 190-191. This principle was further stated in the Commission's Access Charge Reform NPRM, FCC 96-488, at paragraph 9.

“As a legal matter, however, transport and termination of local traffic by an incumbent LEC are different services from access service provided by that incumbent LEC for long-distance telecommunications. Transport and termination of local traffic are governed by 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act.”

Level 3, however, refuses to acknowledge this fundamental statutory principle. Instead, Level 3 buries its request for a free ride on LEC access facilities in the midst of technobabble descriptions of the supposed wonders of its service, while it avoids discussion of the common sense principle that a telephone call between two people located in different local calling areas is a long distance telephone call. Level 3 states its intention to “dump” this long distance traffic onto the network as if it were legitimate local interconnection traffic. This is contrary to the Telecom Act and to the Commission's rules.

5. The technology utilized by Level 3 is merely one more development in the long history of telephony. From the earliest system of multiple end-users utilizing crank telephones on a single circuit, telephony has evolved through myriad technological developments. Many portions of the so-called “legacy” network already make use of

packet-based switching, which underlies Internet Protocol technology.³ Technological development and evolution do not furnish an excuse for the free use of LEC access facilities.

6. Level 3 attempts to make the same “bootstrap” argument advanced by AT&T in AT&T’s petition in WC Docket No. 02-361 when Level 3 feigns shock at the prospect of being required to pay allegedly “retroactive” access charges.⁴ Neither Level 3 nor AT&T can legitimately be surprised that LECs demand payment of access charges lawfully due for use of LEC access facilities to originate and terminate long distance telephone calls. The alleged ambiguity in the access charge rules that Level 3 and AT&T attempt to rely upon does not exist; it is merely wishful thinking on the part of Level 3 and AT&T.

7. Level 3 also claims to be unable to assign a geographical location to the “IP end” of its traffic.⁵ VoIP service providers are, however, currently stating that they will be able to provide E-911 service by assigning specific location addresses to individual

³The “legacy” network also provides millions of DSL broadband connections which are available to be utilized by potential Level 3 long distance telephone service customers. Thus even the IP-end of a VoIP call may be utilizing the “legacy” network which is supported, in part, by access charge revenues.

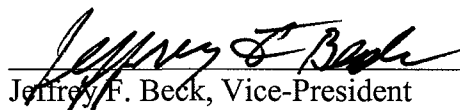
⁴Petition at 4. Level 3’s expressed surprise that it owes access charges is reminiscent of the scene in the film *Casablanca*, where the French Police Captain Renault issues his order to close Rick’s Cafe. “RICK - ‘How can you close me up? On what grounds?’ RENAULT - ‘I am shocked, shocked to find that gambling is going on in here!’ This display of nerves leaves Rick at a loss. The croupier comes out of the gambling room and up to Renault. He hands him a roll of bills. CROUPIER - ‘Your winnings, sir.’ RENAULT - ‘Oh. Thank you very much.’” *Casablanca* script at 94, available on <http://www.vincasa.com/indexscreenplay.html>.

⁵See Petition at 16-19.

users. Surely Level 3 can find a way to keep track of the location of its customer's end of the call. If VoIP providers choose to interface with the existing telephone network, they must be required to comply with network signaling protocols which capture customer location (and with public safety systems such as E-911 and CALEA). If required to do so, they will find a way to comply.⁶ If allowed to "free ride" the network, they will find a multitude of excuses for their claimed inability to participate in the telecommunications system on the same footing as other participants. The Petition of Level 3 should be rejected.

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Respectfully Submitted,



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⁶Such requirements are not insurmountable obstacles for the technologically gifted.